

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA**

In re:	
SKELAXIN (METAXALONE) ANTITRUST LITIGATION	Lead Case No. 1:12-cv-194
THIS DOCUMENT RELATES TO:	MDL Case No. 1:12-md-2343
ALL END-PAYOR ACTIONS	Judge Curtis L. Collier

**END-PAYOR PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, United Food and Commercial Workers Union and Midwest Health Benefits Fund, Pirelli Armstrong Retiree Medical Benefits Trust, Allied Services Division Welfare Fund, Plumbers and Pipefitters Local 572 Health and Welfare Fund, Louisiana Health Service Indemnity Company d/b/a Blue Cross Blue Shield of Louisiana and Laborers Trust Fund for Northern California ("Class Representatives"), on behalf of themselves and the putative Settlement Class they seek to represent (collectively "Class Plaintiffs" or "End-Payors"), respectfully submit this Motion for motion for final approval of the proposed Settlement of this class action with Defendant Mutual Pharmaceutical Company, Inc. ("Mutual"), approval of the Plan of Allocation of the Net Settlement Fund, and final certification of the Class for purposes of the Settlement.

By its Order of August 5, 2014 [Dkt. 781], the Court preliminarily approved the proposed settlement as fair, reasonable, and adequate, and certified the following Class for purposes of settlement. The Court also conditionally certified the following Class for settlement purposes only and for purposes of effectuating the proposed settlement:

All persons or entities in the United States and its territories who purchased and/or paid for some or all of the purchase price for Skelaxin and/or its AB-rated generic equivalents in Arizona, Arkansas, California, the District of Columbia, Florida, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, or Wisconsin (collectively, the “Class States”), in any form, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, during the Class Period. For purposes of the Class definition, persons or entities “purchased” Skelaxin or its generic equivalent if they paid or reimbursed some or all of the purchase price.

Excluded from the Settlement Class are:

- a. Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal, state and municipal government entities, except for government funded employee benefit plans;
- b. Fully insured health plans (*i.e.*, plans that purchased insurance from another third-party payor (“TPP”) covering 100% of the Plan’s reimbursement obligations to its members);
- c. “Flat co-payor” consumers whose plans at the time of purchase would have required them to pay the same fixed dollar co-payment amount for Skelaxin as for generic metaxalone. (The exclusion in this subparagraph “c” shall apply solely to the extent of purchases by such consumers with a fixed dollar co-payment and not with respect to any other purchases by such consumers); and
- d. End-payors who paid for Skelaxin or generic metaxalone that was acquired solely through a prison or federal, state or municipal facility. (The exclusion in this subparagraph “d” shall apply solely to the extent of the just specified payments and not with respect to any other payments for Skelaxin or generic metaxalone by such end-payors).

The Class Period is November 4, 2005 through the date of Preliminary Approval.

The Court by its August 5, 2014 Order also: preliminarily appointed James G. Stranch III of Branstetter, Stranch & Jennings, PLLC as Lead Settlement Class Counsel; appointed the named end-payor plaintiffs as Class Representatives (“Class Plaintiffs”); approved the proposed form and plan of Class notice; appointed notice provider, settlement administrator, and escrow

agent; established a final settlement schedule and fairness hearing date; and stayed all case deadlines as to Mutual.

The Court also previously approved of the proposed method of notice and instructions for exclusion to the Class, all of which were executed by Class Counsel in conjunction with Settlement Administrator Kurtzman Carson Consultants LLC (“KCC”), according to the methodologies set forth in the Court’s Order, which represented the best notice practicable under the circumstances and fully comported with due process. Notably, not a single request for objection to the Settlement was received from the Class, and no consumer Class Members opted-out. Valid requests for exclusion were received from only fifteen (15) third-party payor Class Members (“TPPs”) representing approximately 5.9 percent of the total TPP Class prescriptions.

Having received no objections to the proposed Settlement, and for the reasons detailed in the supporting Memorandum of Law In Support filed contemporaneously herewith, Class Plaintiffs now submit that the settlement, Plan of Allocation, Class, Class Representatives and Class Counsel already preliminarily approved and certified by the Court are ripe for final approval and certification.

In support of this motion, Class Plaintiffs rely upon the entirety of the extensive record in this action, upon the supporting Memorandum of Law, the Declaration of James G. Stranch, III and its exhibits. The parties are also prepared to present oral argument to the Court and supply such additional information as the Court may request in considering this motion at the Final Approval hearing on December 15<sup>th</sup>, 2015.<sup>1</sup>

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<sup>1</sup> Class Counsel previously filed their Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses with supporting documents on August 12, 2014 [Dkt. 783-785] and anticipate that the Court will also hear that motion on December 15<sup>th</sup>, 2015 in conjunction with the final approval hearing.

WHEREFORE, based on the foregoing, Class Plaintiffs' motion should be granted and the proposed form of order granting the relief sought by this motion entered.

Dated: October 30th, 2015

Respectfully submitted,

/s/ James G. Stranch, III

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 30th, 2015, a true and correct copy of the foregoing was served upon counsel of record through the Court's CM/ECF system.

/s/ James G. Stranch, III  
James G. Stranch, III